

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FREDERICK R. RITCHIE,

Plaintiff,

v.

FEDERAL EXPRESS CORP.,

Defendant.

Case No. C04-1753L

ORDER DENYING PLAINTIFF'S
PARTIAL MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on "Plaintiff's Motion for Partial Summary Judgment" (Dkt. #112) and "Defendant's Motion for Summary Judgment" (Dkt. #121). Defendant Federal Express seeks summary judgment on all six of plaintiff's claims: (1) breach of express contract; (2) breach of implied contract; (3) breach of a promise for specific treatment; (4) promissory estoppel; (5) negligent infliction of emotional distress; and (6) intentional infliction of emotional distress. Plaintiff moves for partial summary judgment on his claim for breach of a promise for specific treatment. For the reasons discussed below, the Court grants defendant's motion for summary judgment. Plaintiff's motion for partial summary judgment is denied.

ORDER DENYING PLAINTIFF'S PARTIAL MOTION
FOR SUMMARY JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT- 1

II. FACTUAL BACKGROUND

A. Employment Agreements and Handbooks

Federal Express recruited and hired Frederick Ritchie on November 2, 1983. After accepting Federal Express' offer, Ritchie signed a written employment agreement ("Employment Agreement") as part of his employment application which contained the following language under the headline "**IMPORTANT**":

should I be given employment either in the position applied for or any other, now or hereafter, such employment shall be for an indefinite period and may be terminated at any time without notice or liability for wages or salary, except such earned at date of such termination, and without any other liability whatsoever (for the purposes of this paragraph, wages or salary earned at the date of termination shall only include pay for time worked, and shall not include pay for accrued vacation, sick leave or the like). That all terms and conditions of my employment, except to the extent covered specifically by this contract or any other valid contract between Company and me (or someone legally acting on my behalf) shall be determined and governed by Company's Policies and Procedures Manual, as same may be amended from time to time hereafter (a copy of which, together with all amendments, shall at all times be available to me). That my continued or permanent employment will be contingent upon completion of all employment requirements of whatever position I may hold to complete satisfaction of Company.

Declaration of Fred Ritchie ("Ritchie Decl.") (Dkt. #131), Ex. 3.

Within three years, Ritchie was promoted to the position of Technology Services Field Manager for the Pacific Northwest District. He remained a manager for seventeen years. As a manager, he frequently referred to the Policies and Procedures Manual ("People Manual") that is referenced in the Employment Agreement. The People Manual, which Ritchie last received in November 2002, contained a disclaimer similar to the one contained in Ritchie's Employment Agreement:

This manual is intended solely as a guide for management and employees during employment. It is not a contract of employment, and no such contract may be implied from its provisions. Nothing in this manual shall be construed to abrogate the employment agreement signed upon application for employment preserving the

1 Company's and the employee's right to terminate this relationship at
2 the will of either party. The provisions of this manual may be
3 modified, amended or deleted by the Company at any time at its sole
4 discretion without prior notice.

5 Declaration of Holly A. Harris ("Harris Decl.") (Dkt. #121), Ex. 6. Policies contained in the
6 People Manual are also referenced in the Employee Handbook. Ritchie received new editions of
7 the Employee Handbook in 1986, 1995, 1998, and 2002. He signed an acknowledgment after
8 receiving each new edition, and the 2002 acknowledgment stated the following:

9 The FedEx Express Employee Handbook is not a contract of
10 employment, nor should its provisions be read or implied to provide
11 for one. Your specific rights as an employee are governed by the
12 Employment Agreement you signed in your employment application.
13 For more specific guidelines, refer to the PEOPLE Manual and Your
14 Employee Benefits book.

15 Official personnel policies, as found in the PEOPLE Manual are
16 referenced throughout the Employee Handbook and in the index.

17 Harris Decl., Ex. 7.

18 **B. Employee Complaints Relating to Ritchie**

19 Management at Federal Express received two complaints relating to the behavior of
20 Ritchie in late December 2002 and early January 2003. The first complaint originated with
21 Renee Moore, a non-management employee, who notified Dawn Melillo, a Senior Human
22 Resources Manager, that Ritchie had made an inappropriate comment to her while riding an
23 elevator at work. She described the incident in a statement included in her EEO complaint:

24 I was taking a small box with some letters on top of it down to the
25 drop box in the parking garage on floor P2 last night when I got to
26 parking garage elevators I came upon two co-workers (Sandra Elion
27 and Fred Ritchie) we all three got onto the elevator and Fred said to
28 me "here let me get that box" and I said "no it's ok it's not heavy"
I said "no let me help you I wouldn't want you to strain your
milk sacks." I was very humiliated and upset, I said to Fred "You're
way out of line!" and then I got off the elevator on P2 and both
Sandra and Fred continued down the elevator. I am very tired of his
sexual innuendoes around the office. Everyday he asks me if I have
missed him. I want him to stop. Fred talks to women in the District
Office like this all the time and no-one says anything about it they
just put up with it. If he is in the breakroom or copy room when I go
in there I usually turn around because I don't want to hear any of his

1 rude comments.

2 Declaration of Patrick L. McGuigan (“McGuigan Decl.”) (Dkt. #113), Ex. 9. Plaintiff does not
3 dispute having the conversation, but instead maintains that he stated “[y]ou’ll bust your milk
4 sack lifting that thing.” Declaration of Richard S. McConnell (“McConnell Decl. II”) (Dkt.
5 #123), Ex. C (emphasis added). He denies that he intended the statement to have a sexual
6 dynamic and argues instead that the phrase simply meant to “strain your guts” and that he has
7 long used this phrase with both men and women. Id.

8 The second incident occurred on the same day, December 30, 2002, and involved another
9 non-management employee, Michelle Piza. She documented her complaint in an e-mail to
10 Senior Human Resource Representative Holly Harris on January 6, 2003:

11 On Monday, 12/30/02, I was in our lunch room and present at
12 the time were Fred Ritchie, Geri Jerguson, and another male
13 employee that I have never seen before. The Friday prior,
14 Geri and I walked down 20 flights of stairs so I asked her if
15 her legs were sore and she said no and I said mine were real
16 sore from the walk. Fred Ritchie says, “your legs are sore?
17 Why, have you guys been spreading them all over the office
18 again?” Fred laughed and the other individual slightly
19 chuckled. I said to Fred, “that was so rude,” and then Fred
20 said, “no it wasn’t,” and Geri said, “yes it was.” Fred
21 continued to laugh. I then told him, “Fred, I don’t know how
22 you think up these things in your head.” It was clear that I
23 was offended and quite angry. I then left the room, thought
24 about it for a while, and then called my manager, Kevin
25 Wilczynski, who recommended I speak to Dawn Melillo, Sr.
26 HR Rep.

27 My wish is not for Fred to get in trouble, but for him to learn
28 his boundaries. He so often makes offensive remarks and
29 without having documented incidences, it’s difficult for me to
30 advise you of all of them in the 4.5 years that I have been
31 employed with FedEx. I am not singled out, Fred’s
32 inappropriate comments are made to many people and some
33 of them just laugh it off, which I believe encourages him to
34 continue. Fred Ritchie is not a bad man and in a way I feel
35 badly about having to report this incident, however, I think
36 that it’s time he stopped this behavior.

37 Declaration of Michelle N. Piza (“Piza Decl.”) (Dkt. #121), Ex. 1. Ritchie does not deny
38 making the statement and agrees that it was “something along those lines.” Declaration of

1 Richard S. McConnell (“McConnell Decl. I”) (Dkt. #122), Ex. A (emphasis added).

2 During the investigation of these complaints, Federal Express also became aware
3 of other incidents of concern. Most prominently, investigators learned that Ritchie had brought
4 a Christmas card to the office that contained a photograph of a woman exposing her genitals.
5 Michelle Piza confirmed that Ritchie showed her the card and that she believed that the card was
6 inappropriate. Ritchie acknowledges that he brought such a card into the office and that other
7 people viewed the card. McConnell Decl. II, Ex. C.

8 On January 10, 2003, Ritchie was notified by phone and by mail that he was being placed
9 on investigative suspension with pay. The investigation was carried out by Holly Harris and
10 Managing Director of Technology Services, John Lowey. The investigation included an
11 interview with Ritchie to discuss the allegations. On January 28, 2003 Ritchie was terminated
12 for violating the company’s Acceptable Conduct Policy. Ritchie initiated his appeal on the same
13 day.

14 III. DISCUSSION

15 Generally, “an employment contract indefinite in duration may be terminated by either
16 the employer or the employee at any time, with or without cause.” Swanson v. Liquid Air
17 Corp., 118 Wn.2d 512, 520 (1992). Ritchie’s Employment Agreement explicitly states that his
18 employment with Federal Express was to “be for an indefinite period and may be terminated at
19 any time without notice,” and that his employment was “contingent upon completion of all
20 employment requirements of whatever position I may hold to complete satisfaction of
21 Company.” Ritchie Decl., Ex. 3. Therefore, at the time he was hired, Ritchie’s employment
22 with Federal Express could be terminated by either party at any time, with or without cause.¹

23
24 ¹ Ritchie maintains that he was told at some point before he signed his contract that he could not
25 be fired without cause and a hearing and that he “did not understand” that this agreement had been
26 modified by the “unmentioned” disclaimer contained in the Employment Agreement. He provides little
27 detail of this earlier “offer,” or why such assurances were not included in either his offer letter or the
28 Employment Agreement. In any event, such oral assurances do not create an implied employment

An at-will employment arrangement can be modified, however, in three ways: (1) by an express agreement which specifies other terms and conditions of employment; (2) by an implied contract that arises from the conduct of the parties; or (3) irrespective of an implied contract, when an employer makes a promise of specific treatment in specific situations. Kuest v. Regent Assisted Living, 111 Wn. App. 36, 48 (2002). Federal Express argues that its employment agreement with Ritchie was at-will and that no modifications were made to that aspect of their agreement at any time. Ritchie maintains that the People Manual, either contractually or through promises for specific treatment in specific situations, modified his at-will relationship with Federal Express.

A. Express or Implied Contract

An “at-will employment relationship may be modified by contract, express or implied, but such modification is subject to the usual rules applicable to contract formation.” Kuest, 11 Wn. App. at 50. Therefore, in order to establish that the Employment Agreement was contractually modified by the People Manual, Ritchie must demonstrate that Federal Express offered different employment terms after he began employment, and that he accepted those terms and gave consideration. Id. at 51. The consideration given must be in addition to the services he was required to provide as part of his job and must result in a detriment to him and a benefit to Federal Express. Roberts v. Atlantic Richfield Co., 88 Wn.2d 887, 895 (1977); see also Thompson v. St. Regis Paper Co., 102 Wn.2d 219, 228-29 (1984).

Ritchie argues that he provided such consideration through his “exceptional job performance,” “unswerving loyalty,” and “dedication foregoing countless job offers and his legal right to unionize.” Plaintiff’s Response at p. 9. Longevity of service and foregoing other job opportunities, however, do not constitute sufficient consideration to create either an implied or an express contract for altering the at-will nature of the employment relationship. Roberts, 88

contract. See Lawson v. Boeing Co., 58 Wn. App. 261, 265 (1990).

Wn.2d at 895-96. Foregoing the legal right to unionize can provide sufficient consideration, Swanson, 118 Wn.2d at 524, but Ritchie has failed to provide any factual support for his contention he gave up a right to unionize in exchange for the policies contained in the People Manual. No mention of foregoing such a right is contained in either of Ritchie's declarations, nor does it appear in his motion for summary judgment. The first and only mention of this claim is contained in a single sentence in his response to defendant's motion for summary judgment. Without any evidence of additional consideration, plaintiff's claims for breach of express contract and breach of implied contract cannot survive summary judgment. See Kuest, 11 Wn. App. at 51.

B. Specific Promise for Specific Treatment & Promissory Estoppel

The Washington Supreme Court also recognizes a cause of action when, an employer, for whatever reason, creates an atmosphere of job security and fair treatment with promises of specific treatment in specific situations and an employee is induced thereby to remain on the job and not actively seek other employment, those promises are enforceable components of the employee relationship. Thompson, 102 Wn.2d at 230. This claim rests on a justifiable reliance theory and does not require the same contractual analysis that is necessary for an implied or express contract claim. Korslund v. Dyncorp Tri-Cities Servs., Inc., 156 Wn.2d 168, 184-85 (2005). An employee seeking to enforce promises that an employer makes in an employee handbook under this theory must prove: (1) that a statement in the employee handbook amounts to a promise of specific treatment in specific situations; (2) that they justifiably relied on the promise, and (3) that the promise was breached. Bulman v. Safeway, Inc., 144 Wn.2d 335, 340-41 (2001). Each element presents a question for the trier of fact unless reasonable minds could reach but one conclusion. Korslund, 156 Wn.2d at 185.

1. Specific Promise & Justifiable Reliance

Plaintiff argues that the People Manual promised specific treatment in two ways relevant to his dismissal. First, he argues that the Guaranteed Fair Treatment Procedure ("GFTP")

1 contained in the People Manual required progressive discipline. Second, he contends that the
2 company was required to conduct a full, fair and objective investigation in accordance with the
3 GFTP prior to his termination.

4 Where a handbook provision describes policies that are discretionary or optional on the
5 part of the employer, they will not be specific enough to create a binding promise. Stewart v.
6 Chevron Chem. Co., 111 Wn.2d 609, 613-14 (1988) (where handbook "used the terms 'shall,'
7 'will,' and 'must,' but in the layoff provision used 'should,' indicating Chevron intended the
8 provision to be advisory," the provision was not sufficiently specific to be binding); see also Hill
9 v. J.C. Penny, Inc., 70 Wn. App. 225, 236 (1993) ("A 'promise' in a manual is not binding if its
10 performance is optional or discretionary on the part of the promisor."). Though progressive
11 discipline is discussed in the People Manual's "Acceptable Conduct" policy, there is nothing to
12 indicate it is mandatory.² The policy states that "a manager may issue a warning letter and a
13 disciplinary suspension without pay," if the manager "decides not to terminate an employee for a
14 serious violation." McGuigan Decl., Ex. 3. A manager also "may return the employee to work
15 and issue a warning letter as a means of discipline for the policy violation." Id.

16 Nothing in the "Acceptable Conduct" policy prohibits Federal Express from terminating
17 an employee before first utilizing its progressive discipline procedures. In fact, it expressly
18 states that a number of specific violations "may result in severe disciplinary action up to and
19 including discharge." Id. Included in that list of specific violations is "displaying blatant or
20 public disrespect toward any employee or customer while on duty, on Company property, at
21 collection sites, or at off-site Company meetings and functions," a "[l]eadership failure of a
22 member of management," or "[a]ny other act obviously and significantly detrimental to the best
23 interest of FedEx Express and/or fellow employees as determined by management." Id. The
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25 ²As a manager, Ritchie himself terminated an employee for a first time violation of the
26 "Acceptable Conduct" policy in 1995. Harris Decl., Ex. 2.

1 progressive discipline procedures laid out in the People Manual's "Acceptable Conduct" policy
2 are discretionary and do not constitute promises for specific treatment.

3 Whether the People Manual's "Acceptable Conduct," GFTP, and "Sexual Harassment"
4 policies require a full and fair investigation prior to termination is a more difficult question,
5 which involves disputed questions of material fact. The "Acceptable Conduct" policy states in
6 discretionary terms that "[a]ll alleged violations should be thoroughly investigated and
7 documented." Id. The GFTP, however, states that "[a]n employee's *right* to participate within
8 the guidelines of the process is *guaranteed*." Id. (emphasis added). It goes on to state that
9 "[a]ll employees who receive discipline, including termination, or treatment that they believe to
10 be unfair are eligible to participate in the GFTP/EEO process." Id. Other provisions in the
11 GFTP also appear to take on a mandatory dimension: "The GFTP/EEO process for
12 nondiscrimination issues is a 3-step process that requires specific individuals to perform specific
13 actions within a designated timeframe." Id. The "Sexual Harassment" policy also indicates the
14 GFTP process is mandatory:

15 All sexual harassment complaints will be treated as internal EEO
16 complaints and follow the internal EEO procedure as outlined in 5-5
17 Guaranteed Fair Treatment Procedure/EEO Complaint Process,
18 Table 2. Internal EEO Discrimination or Harassment Complaint
19 Procedure. All complaints will be promptly and thoroughly
20 investigated in as confidential a manner as possible.

21 Id.

22 Federal Express counters that the disclaimers contained in the Employment Agreement,
23 People Manual and Employee Handbook prevent it from being bound by any specific promises
24 that may be contained in the People Manual. An employer can avoid being bound by statements
25 contained in employment manuals by specifically stating "in a conspicuous manner that nothing
26 contained therein is intended to be part of the employment relationship and are simply general
27 statements of company policy." Thompson, 102 Wn.2d at 230. In addition to the broad
28 disclaimers contained in these documents which are quoted in Section II(A), there are also

1 disclaimers contained in each of the relevant policy provisions in the People Manual. The
2 “Acceptable Conduct” policy, for instance, has a section entitled “Employment at Will,” which
3 states that:

4 The employment relationship between the Company and any
5 employee may be terminated at the will of either party as stated in
6 the employment agreement signed upon application for employment.
7 As described in that agreement, the policies and procedures set forth
8 in this manual provide guidelines for management and employees
9 during employment but do not create contractual rights regarding
10 termination or otherwise.

11 McGuigan Decl., Ex. 3. The “Termination” policy contains an identical disclaimer, and the
12 GFTP includes a similar, but slightly different disclaimer:

13 The GFTP/EEO process is the exclusive remedy for all disputes or
14 work-related complaints arising from an employee's employment or
15 termination from employment. As described in the employment
16 agreement signed upon application for employment, the policies and
17 procedures set forth by the Company provide guidelines for
18 management and other employees during employment, but do not
19 create contractual rights regarding termination or otherwise.

20 Id.

21 “[A]scertaining the effect of a disclaimer will often involve factual determinations which
22 must be resolved by the trier of fact if there are factual disputes or if there is more than one
23 inference from the evidence.” Swanson, 118 Wn.2d at 528. One factual determination that must
24 be made is whether the disclaimer was effectively communicated to the employee. Id. at 529.
25 In this instance, the presence of multiple disclaimers and signed acknowledgments provide
26 compelling evidence that the disclaimer was effectively communicated to Ritchie. See Id. 530,
27 535 (indicating that signed acknowledgments and disclaimers contained on the same documents
28 that plaintiff relies on for their specific treatment claim are strong signs of effective
29 communication). Ritchie himself administered these policies frequently in his position as a
30 manager and it is likely that he was aware of these disclaimers as a result.

31 Even if the disclaimer was effectively communicated, however, “[a]n employer's
32 inconsistent representations can negate” its effect. Swanson, 118 Wn.2d at 532. As the

1 Swanson court explained,

2 an employer is not entitled to make extensive promises as to working
3 conditions—promises which directly benefit the employer in that
4 employees are likely to carry out their jobs satisfactorily with
promises of assured working conditions—and then ignore those
promises as illusory.

5 Id. at 536. “Communications containing statements that have overcome disclaimers have
6 included employee policy manuals and oral assurances. Examples of statements that have
7 overrun disclaimers to the contrary are detailed grievance or disciplinary procedures to be taken
8 before discharge and exclusive lists of reasons for discharge.” Id. at 532. The impact of any
9 inconsistent representations on the effectiveness of the disclaimer can only be determined after
10 “[a]ll the circumstances, and the representations and practices of the employer” are examined.
11 Id. at 534-35.

12 Here, there are a number of facts that could support a finding that Federal Express
13 negated the coverage of the disclaimer in the context of termination procedures. Ritchie
14 contends that he was told that he was required to follow the GFTP as a member of management
15 and that he had administered the policy with that understanding. He has produced a number of
16 declarations from other Federal Express employees indicating that they too believed the policies
17 were mandatory. See Declaration of Mark O’Neill, Declaration (Dkt. #115), Declaration of
18 Sharon Olsen (Dkt. #116), and Declaration of Barbara Stoll (Dkt. #117). Further, the language
19 of the disclaimer contained in the GFTP, indicating that the “GFTP/EEO process is the exclusive
20 remedy for all disputes or work-related complaints arising from an employee's employment or
21 termination from employment” makes the scope of the disclaimer, at least as it relates to the
22 right of employees to utilize the GFTP, less than clear. Federal Express Senior Human Resource
23 Representative Holly Harris herself acknowledges that the GFTP/EEO policy “guarantees an
24 employees [sic] access to use the procedure’s guidelines for his/her complaint of unfair
25 treatment.” Harris Decl. ¶ 13. Because these questions involve disputed issues of material fact,
26 they are not appropriately decided on summary judgment.

1 **2. Breach**

2 That said, even if Ritchie could establish the presence of specific promises (or an implied
3 or express contract), his claim would nevertheless fail because he has put forward no material
4 facts to support his assertion that Federal Express has breached such promises. Whether or not
5 is was required to do so, the undisputed facts indicate that Federal Express terminated Ritchie
6 only after conducting a full investigation in accordance with the procedures spelled out in the
7 People Manual.

8 Ritchie argues his termination constituted a breach of Federal Express' specific promises
9 because (1) "the investigation was a sham;" (2) he was denied his right to appeal; and (3) there
10 "was no basis for summary firing." Plaintiff's Motion at pp. 21-24. Ritchie's first alleged
11 breach cannot succeed because he does not claim that a "full and fair" investigation would have
12 produced substantially different findings than resulted from Federal Express' actual
13 investigation. Though Ritchie makes extensive reference to falsified complaints, falsified
14 evidence, false statements, intentional misrepresentations, unsubstantiated rumors and
15 unsubstantiated evidence, remarkably, he does not challenge in any substantive way the three
16 allegations that formed the basis of Federal Express' decision to terminate his employment. He
17 admits, for instance, that he told Renee Moore that she would bust her "milk sack" lifting the
18 box. The only factual aspect of Federal Express' conclusion that he challenges his contention
19 that he said "milk sack," not "milk sacks." He also admits that he apologized to Moore the
20 following day because his comment was "offensive." McConnell Decl. I, Ex. A. Nor does he
21 dispute making the statement to Michelle Piza or the allegation that he showed other Federal
22 Express employees a Christmas card depicting a woman exposing her genitals. *Id.* Given these
23 admissions, it is impossible for any rational fact finder to conclude that the investigation was a
24 "sham."

25 Ritchie has also not put forward material facts to support his contention that Federal
26 Express failed to provide him with sufficient facts to enable a meaningful appeal. He

1 specifically contends that John Lowey and Holly Harris refused to provide him with the
2 specifics of the allegations filed against him prior to his termination. Motion at p. 13. He also
3 claims that his ability to appeal was hindered because his termination letter failed to apprise him
4 of the necessary factual background to the allegations. These claims run contrary to the
5 unchallenged facts. In his deposition, Ritchie admits that he actually discussed all three
6 incidents with both Harris and Lowey during the interview they conducted with him after his
7 suspension, but prior to his termination. McConnell Decl. I, Ex. A. His knowledge of the
8 factual basis of the allegations is evidenced by the fact that Ritchie proceeded to file an appeal
9 of his termination which contained a detailed written statement addressing all three of the
10 allegations discussed in his earlier interview. See McConnell Decl. II, Ex. C. In short, Ritchie
11 has put forward no factual support for his allegation that Federal Express denied him
12 information necessary for him to make a meaningful appeal.³

13 Finally, Ritchie's argument that there was "no basis for his summary firing" is also
14 without merit. A decision to terminate an employee is considered to be for just cause when it is
15 not made "for any arbitrary, capricious, or illegal reason" and the decision "is based on facts (1)
16 supported by substantial evidence and (2) reasonably believed by the employer to be true."
17 Baldwin v. Sisters of Providence in Washington, Inc., 112 Wn.2d 127, 139 (1989). As has
18 already been discussed, Ritchie admits that the factual conclusions of Federal Express'
19 investigation are largely accurate. There is therefore no dispute as to whether the decision to
20 terminate his employment was based on accurate information. Based on those facts, Federal
21 Express reasonably concluded that his behavior violated the "Acceptable Conduct" policy and
22 that termination was justified. While Ritchie certainly disagrees with the decision to terminate

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24 ³ Ritchie also contends that his right to appeal was denied because Vice President Larry Netter
25 unilaterally determined that he would conduct the appeal "without the required senior vice president."
26 There was no senior vice president in the chain of command at the time of Ritchie's termination. Harris
Decl. at ¶ 18. The policy clearly contemplates such a situation and for that reason states that "*when*
multiple levels of management exist a consensus decision is rendered." (emphasis added).

1 his employment, he has put forward no facts that would indicate that Federal Express acted for
2 an “arbitrary, capricious or illegal reason.” Even if the GFTP guarantees an employee’s right to
3 participate within the guidelines of the process, “the outcome is not ensured to be in the
4 employee’s favor.” McGuigan Decl., Ex 3. Due to the lack of dispute over material facts on the
5 element of breach, Ritchie’s claims for breach of a specific promise and promissory estoppel⁴
6 cannot survive summary judgment.

7 **C. Negligent and Intentional Infliction of Emotional Distress**

8 Federal Express’ motion for summary judgment on Ritchie’s claims for negligent and
9 intentional infliction of emotional distress is also granted. Ritchie does not oppose Federal
10 Express’ motion on his negligent infliction of emotional distress claim, but argues that his
11 intentional infliction of emotional distress claim should survive because Washington law does
12 not require him to demonstrate that his claim is susceptible to medical diagnosis and provable
13 with medical evidence. Ritchie is correct that an intentional infliction of emotional distress
14 claim does not require such evidence, but he still must put forward proof of (1) extreme or
15 outrageous conduct; (2) intentional or reckless infliction of emotional distress, and (3) resulting
16 actual severe emotional distress. Kloepfel v. Bokor, 149 Wn.2d 192, 194-95 (2003). Such a
17 claim must be based on conduct ““so outrageous in character, and so extreme in degree, as to go
18 beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in
19 a civilized community.”” Id. at 198 (quoting Grimsby v. Samson, 85 Wn.2d 52 (1975)). Ritchie
20 in this instance has not put forward evidence to support an allegation that Federal Express’
21 actions rose to the level of “extreme or outrageous conduct.” Nor has he put forward any
22 evidence to support an allegation that Federal Express intentionally sought to inflict emotional
23

24 ⁴ Washington courts treat claims for promissory estoppel and breach of a specific promise as one
25 in the same. Shaw v. Housing Auth. of City of Walla Walla, 75 Wn. App. 755, 760-761 (1994). Given
26 that Ritchie has failed to establish any facts to support a breach of the promise at issue, his promissory
estoppel claim cannot proceed.

1 distress. As such, his claim for intentional infliction of emotional distress cannot proceed.

2 **IV. CONCLUSION**

3 For all the foregoing reasons, plaintiff's motion for partial summary judgment (Dkt.
4 #112) is DENIED. Defendant's motion for summary judgment (Dkt. #121) is GRANTED.

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6 DATED this 16th day of April, 2007

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10 Robert S. Lasnik
11 United States District Judge
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